

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Louise Jamison,)	
)	C/A No. 5:04-CV-23111
Plaintiff,)	
)	
vs.)	OPINION AND
)	O R D E R
Jefferon Pilot Insurance Company,)	
and Unum Insurance Company)	
)	
Defendants.)	
_____)	

Plaintiff Louise Jamison brought this action on October 27, 2004, alleging wrongful denial of benefits and breach of fiduciary duty under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1132. Plaintiff was an employee of Electrolux Home Products and was enrolled through her employer disability plan offered and administered by Jefferson Pilot Insurance Company (“Jefferson Pilot”) prior to January 1, 1999 and Unum Insurance Company (“Unum”) after January 1, 1999. On November 30, 2004, the court issued a specialized case management order. Pursuant to paragraph five of the scheduling order, the parties were to file cross-motions for judgment and a joint stipulation as to the facts and administrative record to be considered by the court. The court heard oral arguments on the motions on September 15, 2005.

DISCUSSION

Plaintiff has failed to show that she was covered under the Jefferson Pilot or Unum disability plans. It is established that the burden lies with the insurance beneficiary to prove her disability benefits under a plan. See, e.g., Fuja v. Benefit Trust Life Ins. Co., 18 F.3d 1405, 1408 (7th Cir. 1994). This includes a showing that a plaintiff was totally disabled and was covered under the plan at the time of his disability. During oral argument, the court requested that Plaintiff state the date

that she claims that she was totally disabled, describe the totally disabling condition, and direct the court to evidence in the record to substantiate the date of disability. Plaintiff was unable to direct the court to the requested information. Therefore, Plaintiff has not established that she was totally disabled during her employment or was covered under the Jefferson Pilot or Unum plans at the time of her alleged disability.

For reasons enumerated at the September 15, 2005 hearing, Jefferson Pilot's motion for judgment is **granted**. Unum's motion to dismiss is **granted**. Having withdrawn its counterclaim for set-off, Jefferson Pilot's counterclaim is **dismissed** without prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina
October 19, 2005